



No. 7492



IN THE
United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT. 13

REX B. GOODCELL, Former Collector
of Internal Revenue for the Sixth Col-
lection District of California,

Appellant,

v.

THE KERN RIVER OILFIELDS OF
CALIFORNIA, LTD., a corporation,

Appellee.

On Appeal From the District Court of the United
States, for the Southern District of California,

BRIEF FOR THE APPELLANT

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BRIEF FOR THE APPELLANT

Opinion Below

The only previous opinion in the present case is that of the District Court of the United States for the Southern District of California (R. 34-35), which is unreported.

Jurisdiction

This appeal involves income taxes of The Kern River Oilfields of California, Ltd., a corporation, for the fiscal year ended May 31, 1924 (R. 27-28), and is taken from a judgment of the District Court in favor of the taxpayer entered November 8, 1933 (R. 22-23). The appeal is brought to this Court by petition for appeal on behalf of the Collector of Internal Revenue filed February 8,

1934 (R. 48), pursuant to Section 128 (a) of the *Judicial Code*, as amended by the Act of February 13, 1925.

Questions Presented

1. Whether a British corporation, doing business in the United States, is entitled to deduct from gross income, income taxes paid to Great Britain when such income taxes were deducted from dividends paid to its stockholders?

2. Whether the judgment is supported by the findings?

Statutes and Regulations Involved

The applicable provisions of the statutes and regulations involved will be found in Appendices A and B in appellant's brief in the case of *Galen H. Welch, Collector, v. The St. Helens Petroleum Company, Ltd., a corporation*, No. 7488, now pending before this Court.

Statement

The facts were stipulated. (R. 27-30.) The appellee is a corporation organized under the laws of Great Britain, having an office and place of business at Los Angeles, California (R. 27), whose income from sources within the United States during the fiscal year ended May 31, 1924, was 76.61 per centum of its total income from all sources during that year (R. 29).

During the fiscal year ended May 31, 1924, appellee accrued and paid to the government of Great Britain an income tax amounting to £15,571-12-6 Sterling, which, at the rate of \$4.40, was the equivalent of \$68,540 in United States currency, of which appellee deducted from divi-

dends paid by it to its stockholders during said fiscal year an amount of at least \$52,507.73 on account of said British income taxes. (R. 29.)

In its income tax returns for the fiscal year ended May 31, 1924, appellee reported a tax due therein of \$18,340.99, which was duly assessed and paid to the appellant, then Collector of Internal Revenue for the Sixth Collection District of California. (R. 28.)

On or about April 17, 1928, appellee filed with the Commissioner of Internal Revenue a claim for refund of \$18,340.29, being the whole of the tax paid for the fiscal year ended May 31, 1924, claiming that it should have taken deductions in its return, in full for London overhead expenses in proportion to gross income from the United States; for depletion based on cost instead of valuation as of March 1, 1913; and for British income taxes deducted from dividends paid to its stockholders. (R. 6-7.) The Commissioner allowed appellee's claim for refund to the extent of \$3,754.71, and rejected it to the extent of \$14,585.58. (R. 28-29.) No other deductions were claimed by appellee in its claim for refund (Ex. 6), or in the complaint (R. 4-10). The Commissioner has allowed no deduction on account of said British income tax for the fiscal year ended May 31, 1924. (R. 29-30.) Appellee contended, and appellant denied, that appellee was entitled to such deduction, but it was agreed that if said British income taxes were deductible, the amount of such deduction for the fiscal year ended May 31, 1924, was \$52,507.73. (R. 29.) This amount was allowed as a deduction by the court. (R. 20-21, 41-42.)

Upon the basis of the disallowance by the Commissioner of appellee's claim for refund to the extent of \$14,585.58 (R. 28-29), this suit was commenced on November 6, 1930, for the recovery of \$6,563.47 (R. 4-10).

By stipulation a jury was waived, and the case was tried to the court without the intervention of a jury. (R. 26.) At the close of all the evidence counsel for appellant moved for judgment in favor of the appellant (R. 31), and on September 21, 1923, the court, by minute entry, ordered judgment in favor of the appellee (R. 34-35). The appellant filed requests for special findings of fact and conclusions of law (R. 36-38), which were denied by the court (R. 42). The findings adopted by the court (R. 18-21), were those requested by the appellee (R. 38-42).

The court held that the appellee was entitled to a deduction of \$52,507.73 on account of dividends paid to the government of Great Britain and deducted from dividends to its stockholders (R. 20-21), and on this basis rendered judgment for the appellee for \$6,563.47 (R. 22-23). From this judgment for appellee the appellant has appealed. (R. 48.)

Specification of Errors to be Urged

The court erred (R. 49-53):

1. In rendering judgment against the appellant and in favor of the appellee in the amount of \$6,563.47, together with interest at the rate of six (6%) per cent on \$830.36 from May 8, 1925; on \$4,585.08 from February 10, 1925, and on \$1,148.03 from November 17, 1924,

with costs taxed at \$20, in that the evidence introduced herein and the facts found therefrom by the court and the record in this cause are insufficient to support a judgment in favor of the appellee in said amount, or in any other sum or at all, for the reason that said evidence and the facts established and found by the court and the record disclose that appellee is a corporation organized under the laws of Great Britain which, during the fiscal year ended May 31, 1924, accrued and paid to the government of Great Britain an income tax equivalent to \$68,540 in United States currency; and that the appellee deducted from the dividends paid by it to its stockholders during said fiscal year an amount of at least \$52,507.73, on account of said British income taxes.

2. In rendering judgment against the appellant and in favor of the appellee herein for the reason that said judgment is not supported by the facts found by the court herein for the reason that the court found as a fact that during the fiscal year ended May 31, 1924, appellee accrued and paid to the government of Great Britain an income tax in the amount of £15,571-12-6 Sterling, which, at the rate of \$4.40, was the equivalent of \$68,540 in United States currency. The income of appellee from sources within the United States during the fiscal year ended May 31, 1924, was 76.61 per centum of the total net income of appellee from all sources during said year. The amount of the British income tax allocable to the United States income was \$52,507.73. Appellee deducted from dividends paid by it to its stockholders during said fiscal year, an amount of at least \$52,507.73 on account of said British income taxes.

3. In refusing to adopt the appellant's Proposed Finding of Fact Number I, which reads as follows (R. 51):

“That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action,”

for the reason that the record and the evidence in this case support and require said Proposed Finding of Fact.

4. In refusing to adopt the appellant's Proposed Conclusions of Law numbered I and II, which read as follows (R. 51-52):

“That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action.

“That upon the law, the plaintiff is not entitled to recover any sum whatsoever from the defendant in the above-entitled cause,”

for the reason that the evidence introduced and the facts found by the court in this action require the adoption of said Conclusions of Law.

5. In concluding, as a matter of law, that the Commissioner of Internal Revenue erred in failing and refusing to allow the appellee a deduction on its income tax return for the fiscal year ended May 31, 1924, in the amount of \$52,507.73 for income taxes accrued and paid to the government of Great Britain, and in levying tax assessments upon the basis of net income computed without the allowance of said deductions for the reason that the evidence introduced and the facts found therefrom

by the court disclose that the amount of \$52,507.73 so accrued and paid to the Government of Great Britain for income taxes by appellee was by it deducted from dividends paid by it to its stockholders during said fiscal year ending May 31, 1924.

6. In failing to find and conclude as a matter of law herein that no part of the amount of \$52,507.73, accrued and paid by the appellee to the Government of Great Britain as an income tax during the fiscal year ended May 31, 1924, and deducted by appellee from dividends paid by it to its stockholders during said fiscal year, was deductible from appellee's gross income for said year in computing the correct income tax due from it to the Government of the United States.

7. As a matter of law in not rendering judgment against the appellee and in favor of the appellant for his costs and disbursements expended herein.

Argument

This appeal involves the identical questions that are presented in the third argument in the brief for the appellant in the case of *Galen H. Welch, Collector of Internal Revenue for the Sixth Collection District of California v. The St. Helens Petroleum Company, Ltd., a corporation*, No. 7488, now pending before this Court. The appellant's position is fully presented in the brief for the appellant filed in that case. It will, therefore, not be repeated here but is included herein by reference. Accordingly, copies of appellant's brief in *The St. Helens Petroleum Co., Ltd.*, case, No. 7488, are served herewith upon counsel for the appellee.

Conclusion

For the reasons stated in the appellant's brief in *The St. Helens Petroleum Co., Ltd.*, case, No. 7488, it is urged that the decision of the court below in holding that amount accrued and paid by the appellee to the government of Great Britain as an income tax and deducted by appellee from dividends paid by it to its stockholders during the fiscal year was deductible from appellee's gross income for that year, was erroneous, and should be reversed.

Respectfully submitted,

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January, 1935.